

No. 9/1/87-6Lab./3615.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala, in respect of the dispute between the workman and the management of M/s. Oriental Science Apparatus Workshop, Ambala Cantt.

IN THE COURT OF SHRI V. P. CHAUDHARY,  
PRESIDING OFFICER, LABOUR COURT,  
AMBALA.

Reference No. 163 of 1985.

SHRI SATISH KUMAR ETC. C/O SHRI HEM  
RAJ, 119, SUBHASH NAGAR, AMBALA  
CANTT., AND THE MANAGEMENT OF THE  
MESSRS ORIENTAL SCIENCE APPARATUS  
WORKSHOP, AMBALA CANTT.

Present :

Shri Balbir Singh Saini for workman.  
Shri R. L. Gupta for respondent.

#### AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—*vide* clause (C) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between S/Shri Satish Kumar, Shiv Ram and Bhagwati Prashad and Messrs O.S.A.W., Ambala Cantt., to this court. The terms of the reference are as under:—

Whether termination services of workmen is just and correct, if not to what relief are they entitled?

Workmen Satish Kumar, Shiv Ram and Bhagwati Prashad have alleged through their demand notices that they were employed in the employment of respondent-management in the year 1979. They along with other workers formed their union under the the name and style as the Ambala Scientific and Oriental Science Apparatus Workshops workers union and got it registered under the trade union Act. There after; the union served an Charter of demands some of the demands were accepted by the management and the issues of bonus etc. were deferred. Thereafter; the management felt aggrieved and called workers threatened them, terrorised them and pushed out of factory. All the workmen reported the matter to Shri Bansi Lal, President of their union and also reported this matter to the Labour Department.

But inspite of, that they were not taken on duty. After some time some of the workmen taken on duty, including Shiv Ram and Bhagwati Prashad while Satish Kumar was not taken on duty, so they prayed that they are entitled to wages with effect from 5th December, 1980 as well as reinstatement.

Respondent-management contested the dispute and contended that the management never turned out of the factory in fact the workman turned out of the factory in fact the workmen left the factory premises of their own and they abandoned their jobs out of their free will. Management wrote many letter to the workmen to report for duty but they did not give any positive respond to that. The Government time and again refused to make reference on the grounds that it was the workmen who abandoned employment themselves and therefore there was no question of reference. The rejection of reference was thus on the ground that there being no termination by the management. Management further contended that there was no incident on 27th November, 1980 as alleged in fact on 5th December, 1980 twenty-seven workmen after having resumed duty abruptly left the factory at about 10.30 A.M. under a concerted action without permission by pushing aside the gate of the factory. It was also contended that the management even now prepared to take Shri Satish Kumar in its job while Shiv Ram and Bhagwati Prashad have joined their service.

On the pleadings of the parties the following issues were framed :

#### ISSUES:

- (1) Whether termination of services of workmen as per reference is unjust and illegal, if so its effect? OPW.
- (2) Relief.

At the request of Authorised Representatives of the parties on 4th March, 1986 references Titled Shiv Ram, Bhagwati Prashad and Satish Kumar and Messrs O.S.A.W. Ambala Cantt were consolidated because the similar controversy involved in these cases and similar evidence was to be led.

I have heard Shri Balbir Singh Saini for workmen and Shri R. L. Gupta for respondent management and have perused the oral and documentary evidence placed on the file. My

issuewise findings are as under :  
ISSUE NO. 1:

In support of this issue S/Shri Shiv Ram, Bhagwati Prashad and Satish Kumar appeared made depositions on oath that on 27th November, 1980 they were beaten, terrorised by the management and on 5th December, 1980 they were pushed out of factory premises. They reported the matter to their President,—vide complaint is Ex. A-1. Another complaint is Ex. A-2, which was submitted to Shri Mehar Singh Rathi and the third complaint is Ex. A-3, which was made to the management itself. The another complaint is Ex. A-15, which is addressed to General Secretary one more complaint is Ex. A-18 addressed to Labour Officer, Ambala Cantt. Ex. A-19 is another complaint which is also addressed to Labour Officer Ambala Cantt.

On the other hand Shri Sunmukh Singh, Personnel Officer appeared for the respondent management refuted the allegations of workman and stated that the workmen were misguided by their leaders, they left the job of their own. He tendered into evidence Ex. M-1, which is an application of Shri Satish Kumar, who stated that his back wages be given to him and he wants job as a fresh. Payments were made to Shri Shiv Ram,—vide voucher Ex. M-2 to M-3. Ex. M-2 is Memo submitted to Shri M. K. Jain in which it has been agreed by Shri Shiv Ram Ram Chander, Maharaj Din, Fakir Chand and Avtar Singh etc. that they had been mis-guided due to that fact they have apologized to the management about their mis-conduct and they have resumed their duty. Ex. M-4, Ex. M-5 and M-6 are reports by the concerned in-charge of the respondent to their personnel Manager that the workman had abandoned the job and had left the factory.

Shri Sunmukh Singh also made statement that Shiv Ram and Bhagwati Prashad have joined their duties and they have received their previous dues. This fact has been admitted by Shri Shiv and Bhagwati Prashad; when they appeared in the witness box as their own witnesses.

Shri Satish Kumar refuted the fact that he received an offer from the side of respondent management that he should join service however he admitted that he is running his own business at Shahabad.

After minute perusal of the whole evidence I reach at the conclusion that due to demand notice which was served by the workman upon

the management there was a retrenchment among the workman because some of the demands were accepted and some of the demands regarding bonus etc. were deferred. To pressurised the management that it should accept the remaining demands of the workman, the present workman along with their associates left the factory premises and abstained from their duties. This fact is proved from the note of Shri M. K. Jain the then Joint Labour Commissioner who came at Ambala at the instance of Labour Minister to study the situation at the spot and to get the matter patched up. Mr. Jain has clearly mentioned in his Memo that Shri Shiv Ram etc. workmen have regretted about their mis-conduct towards the management and they abstained themselves away from the factory premises out of their free will. More over evidence of the management also corroborated this fact.

Shri Shiv Ram and Bhagwati Prashad have received their back wages dues etc., and thereafter they again have joined services of respondent management as new hands.

Shri Satish Kumar has been running his own business at Shahabad. He is not willing to join service of respondent management. Although Shri Sunmukh Singh, Personnel Officer of the respondent management stated on oath that management is willing to take Satish Kumar in its employment if he so desires. But Satish Kumar did not express his willingness to join employment of respondent management.

In view of the above circumstances, evidence and on the basis of my discussions I reach at the conclusion that in fact the workman abandoned their job of their own. They were not terminated. Shri Shiv Ram and Bhagwati Prashad have received their all the back dues and have re-joined employment of respondent management however Satish Kumar is at an liberty to collect his dues since he is not willing to join service of respondent management, so it is evident that he has abandoned his job, so not entitled to any other relief, so this issue is decided accordingly.

ISSUE NO. 2 :

For the foregoing reasons on the basis of my issuewise findings I hold that all the three workmen left the job of respondent management of their own and there was no question of termination of their services by the respondent

management, so I pass award regarding the dispute between the parties accordingly.

Dated 2nd April, 1987.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

Endorsement No. 787, dated 2nd April, 1987.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

No. 9/1/87-Lab./3617.—In pursuance of the Provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the workman and the management of M/s Oriental Science Apparatus Workshop, Ambala Cantt.

IN THE COURT OF SHRI V. P. CHAUDHARY,  
PRESIDING OFFICER, LABOUR COURT,  
AMBALA.

Reference No. 161 of 1985.

SHRI SHIV RAM ETC. C/O SHRI HEM RAJ.  
119, SUBHASH NAGAR, AMBALA CANTT.,  
AND THE MANAGEMENT OF THE MESSRS  
ORIENTAL SCIENCE APPARATUS WORK-  
SHOP, AMBALA CANTT.

Present :

Shri Balbir Singh Saini, for workman.

Shri R. L. Gupta, for respondent.

#### AWARD

The Hon'ble Governor of Haryana in the exercise of powers conferred,—vide clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 referred dispute between S/Shri Shiv Ram, Bhagwati Prashad, Satish Kumar and Messrs O.S.A.W. Ambala Cantt to this court. The terms of the reference are as under :—

Whether termination of services of workmen is just and correct, if not to what relief are they entitled ?

Workmen Shiv Ram, Bhagwati Prashad and Satish Kumar have alleged through their demand notices that they were employed in the employment of respondent management in the year 1979. They along with other workers formed their union under the name and style as the Ambala Scientific and Oriental Science Apparatus Workshops Workers Union and got it registered under the trade union Act. Thereafter, the union served a charter of demands some of the demands were accepted by the management and the issues of bonus etc. were deferred. Thereafter, the management felt aggrieved and called workers threatened them, terrorised them and pushed out of factory. All the workmen reported the matter to Shri Bansi Lal, President of their union and also reported this matter to the Labour Department. But inspite of, that they were not taken on duty. After some time some of the workmen taken on duty including Shiv Ram and Bhagwati Prashad while Satish Kumar was not taken on duty, so they prayed that they are entitled to wages with effect from 5th December, 1980 as well as reinstatement.

Respondent-management contested the dispute and contended that the management never turned out of the factory in fact the workmen left the factory premises of their own and they abandoned their jobs out of their free will. Management wrote many letters to the workmen to report for duty but they did not give any positive response to that. The Government time and again refused to make reference on the ground that it was the workmen who abandoned employment themselves and therefore there was no question of reference. The rejection of reference was thus on the ground that there being no termination by the management. Management further contended that there was no incident on 27th November 1980 as alleged; in fact on 5th December, 1980. Twenty-seven workmen after having resumed duty abruptly left the factory at about 10.30 A.M. under a consorted action without permission by pushing aside the gate and the factory. It was also contended that the management even now prepared to take Shri Satish Kumar in its job while Shiv Ram and Bhagwati Prashad have joined their service.

On the pleadings of the parties the following issues were framed :

Issue No. 1 :

Whether termination of services of workmen as per reference is unjust and illegal, if so its effect ? OPW.

Issue No. 2 :

Relief :

At the request of Authorised Representatives of the parties on 4th March, 1986 references Titled Shiv Ram, Bhagwati Prashad and Satish Kumar and Messrs O.S.A.W. Ambala Cantt. were consolidated because the similar controversy involved in these cases and similar evidence was to be led.

I have heard Shri Balbir Singh Saini for workmen and Shri R. L. Gupta for respondent-management and have perused the oral and documentary evidence placed on the file. My issue-wise findings are as under :

*Issue No. 1 :*

In support of this issue S/Shri Shiv Ram, Bhagwati Prashad and Satish Kumar appeared made depositions on oath that on 27th November, 1980 they were beaten, terrorised by the management and on 5th December, 1980 they were pushed out of factory premises. They reported the matter to their President,—*vide* Complaint is Ex-A-1. Another complaint is Ex-A-2 which was submitted to Shri Mehar Singh Rathi and the third complaint is Ex-A-3 which was made to the management itself. The another complaint is Ex-A-15 which is addressed to General Secretary one more complaint is Ex-A-18 addressed to Labour Officer, Ambala Cantt. Ex-A-19 is another complaint which is also addressed to Labour Officer, Ambala Cantt.

On the other hand Shri Sunmukh Singh, Personnel Officer appeared for the respondent-management refuted the allegations of workman and stated that the workmen were misguided by their leaders, they left the job of their own. He tendered into evidence Ex-M-1 which is an application of Shri Shiv Ram who stated that his back wages be given to him and he wants job as a fresh. Payments were made to Shri Shiv Ram,—*vide* voucher Ex. M-2 to M-3. Ex. M-2 is a Memo submitted to Shri R. K. Jain in which it has been agreed by Shri Shiv Ram, Ram Chander, Maharaj Din, Fakir Chand and Avtar Singh etc. that they had been mis-guided due to that fact they have apologized to the management about their mis-conduct and they have resumed their duty. Ex. M-4, Ex. M-5 and M-6 are reports by the concerned incharge of the respondent to their personnel Manager that the workman had abandoned the job and had left the factory.

Shri Sunmukh Singh also made statement that Shiv Ram and Bhagwati Prashad have joined their duties and they have received their previous dues. This fact has been admitted by Shri

Shiv Ram and Bhagwati Prashad. When they appeared in the witness box as their own witnesses.

Shri Satish Kumar refuted the fact that he received an offer from the side of respondent management that he should joined service however he admitted that he is running his own business at Shahabad.

After minute perusal of the whole evidence I reach at the conclusion that due to demand notice which was served by the workman upon the management there was a resentment among the workman because some of the demands were accepted and some of the demands regarding bonus etc. were deferred. To pressurised the management that it should accept the remaining demands of the workman, the present workman along with their associates left the factory premises and abstained from their duties. This fact is proved from the note of Shri M. K. Jain the then Joint Labour Commissioner who came at Ambala at the instance of Labour Minister to study the situation at the spot and to get the matter patched up. Mr. Jain has clearly mentioned in his Memo that Shri Shiv Ram etc. workmen have regretted about their mis-conduct towards the management and they abstained themselves away from the factory premises out of their free will. Moreover evidence of the management also corroborated this fact.

Shri Shiv Ram and Bhagwati Prashad have received their back wages dues etc. and thereafter they again have joined services of respondent-management as new hands.

Shri Satish Kumar has been running his own business at Shahabad. He is not willing to join service of respondent-management. Although Shri Sunmukh Singh, Personnel Officer of the respondent-management stated on oath that management is willing to take Satish Kumar in its employment if he so desires. But Satish Kumar did not express his willingness to join employment of respondent-management.

In view of the above circumstances, evidence and on the basis of my discussions I reach at the conclusion that in fact the workman abandoned their job of their own. They were not terminated. Shri Shiv Ram and Bhagwati Prashad have received their all the back dues and have re-joined employment of respondent-management however Satish Kumar is at an liberty to collect his dues since he is not willing to join service of respondent-management, so it is evident that he he has abandoned his job, so not entitled to any other relief. So this issue is decided accordingly.

Issue No. 2 :

For the foregoing reasons on the basis of my issue-wise findings I hold that all the three workmen left the job of respondent-management of their own and there was no question of termination of their services by the respondent-management, so I pass award regarding the dispute between the parties accordingly.

Dated, the 2nd April, 1987.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

Endorsement No. 807, dated the 10th April, 1987.

Forwarded (Four Copies) to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of Industrial Disputes Act, 1947.

V. P. CHAUDHARY,  
Presiding Officer,  
Labour Court, Ambala.

The 26th May, 1987

No 9/2/87—6Lab/2919 —In pursuance of the provision of Section 17 of the Industrial disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak in respect of the the dispute between the workman and the management of (i) Chief Engineer, Public Health Haryana, Chandigarh (ii) Chief Engineer, Public Health Division No. 1 Hansi (iii) Executive Engineer, Public Health Division No. 2, Hisar.

BEFORS SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 41 of 1985

Between

SHRI RAMESH DASS, APPLICANT AND THE MANAGEMENT OF (i) CHIEF ENGINEER, PUBLIC HEALTH HAAYANA, CHANDIGARH (ii) CHIEF ENGINEER, PUBLIC HEALTH DIVISION NO. 1, HANSI (iii) EXECUTIVE ENGINEER, PUBLIC HEALTH DIVISION NO. 2, HISAR.

Present :—

Shri R.S. Saini, A.R. for the applicant.

Shri S.B. Sharma, A.R. for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryan referred the following dispute, between the workman Shri Ramesh Dass and the management of (i) Chief Engineer, Public Health, Haryana, Chandigarh, (ii) Chief Engineer, Public Heaalth Division No. 1, Hansi (iii) Executive Engineer, Public Health, Division No. 2, Hisar, to this Court, for adjudication,—vide Haryana Govt. Gazette Notification No. 10956-61 dated 18th March, 1985—

Whether the termination of services of Shri Ramesh Dass is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed as a Water Pump Operator about more than four years ago and all through his work and conduct has been satisfactory and that since the Father of the petitioner is a union activist who has always been espousing the causes of the down trodden employees of the respondent department, the respondent department is prejudice against him and his Father and has been impressing upon the petitioner to dissuade his father from taking part in union activities and that the petitioner was not paid full wages, for which, the petitioner filed an action before the authority under the payment of Wages Act, which, piqued the respondent, who ordered its removal from service on 20th Febuary, 1984 in flagrant disregard of the provisions os section 25F of the Industrial Disputes Act, 1947 (her einafter referred to as the Act).

3. In the detailed reply filed by the respondent, it is admitted that the petitioner has been working as a Water Pump Operator in the the public Health Division Hansi since 30th October, 1979 on casual basis but was not given any appointment letter and was kept on duty on the advice of the Chief Engineer, before him an undertaking was given by the petitioner that if on administrative grounds, his appointment letter was not issued. he will not claim anything except wages for the days he actually remained on duty. It is also admitted that Father of the petitioner Shri Sultan Singh is a member of the PWD Mechanical Workers Union, which has not put any demand upon the respondent and as such, there is no question of the respondent being prejudiced against the petitioner or his Father because of his alleged union activities. Rather, it is alleged that the Father of the petitioner was promoted as Chargeman some time ago. It is further alleged that one Rameshwar Dass S/o Shri Sultan Singh was appointed as Mahi by the Executive Engineer, Public Health, Division No. 2, Hisar on 10th

February, 1975 and during this appointment of the said Rameshwar Dass, who actually is the petitioner before this Court under a changed name Shri Ramesh Dass, theft of spare parts of departmental truck number HRB 2212 was committed, in which, the said Rameshwar Dass was involved, who absconded from his duties, because the said official applied for leave for 15 days, which was declined by the official remained absent from duty and so, his services were terminated on 19th July, 1975 and that the Sub Divisional Engineer, Public Health, Sub Division No. 5 Hisar lodged a report with the police on 19th July, 1975 for theft of spare parts and the extra judicial confession statements of the said Rameshwar Dass and Har Lal, Truck Driver were also sent to the police but no action so far has been taken by the police during the last more than ten years.

4. It is further alleged that requisition to fill up the post of Assistant Driver was sent to the Employment Exchange, Hansi by the Sub Divisional Engineer, Public Health, Sub Division No. 2 Hansi and the Employment Exchange forwarded the name of one Shri Mohinder Singh and one Shri Ramesh Dass, who were selected and in the mean time one vacant post of Assistant Driver was filled up by Driver from other sub Division and on the remaining one post the petitioner was employed by later on was relieved from his duties on 12th September, 1979 but was again retained in service when the petitioner approached the Chief Engineer who issued instructions for employment of the petitioner on temporary basis. From the facts detailed above, it is alleged that Shri Rameshwar Dass S/O Shri Sultan Singh on his termination as Mali got his name registered in the Employment Exchange as Ramesh Dass S/o Shri Sultan Singh and so, his services were terminated,—vide letter dated 20th February, 1984 and since his appointment was temporary and on casual basis, compliance of provision of Section 25F of the said Act was not necessary, though it is alleged that the petitioner has been paid his full wages for the period he worked.

5. On the pleadings of the parties, the following issue was settled for decision by me on 30th October, 1985 —

1. As per terms of reference.

6. In support of his case the respondent examined MW-1 Shri Bal Krishan Gupta, SDO, MW-2 — Shri Rattan Dev, Junior Engineer, MW-3 Shri Ravi Chandra, SDO, Public Health Division No. 2, Hansi. The petitioner appeared as his own witness as WW-1.

7. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below :—

8. Before taking up of a discussion of the issue framed, I deem it proper to take up the legal plea taken on behalf of the respondent. It was argued on the strength of law laid down in 1984(8) Vol 6 Simla Law Journal Punjab and Haryana page 454, Om Parkash V/s the Management of Executive Engineer SYL Division number 7 Canal Colony, Kurukshetra, that the respondent is not an "industry" and as such, this dispute cannot be adjudicated upon by this Court. In the authority under reference the Irrigation department of the Govt. of Haryana was taken out from the purview of the term "industry" as defined in Section 2(j) of the said Act. so, there is no reference in the full bench authority of the Honable High Court of Punjab and Haryana that the Public Health department is not an "Industry" under the said Act. On this point the only authority cited on behalf of the petitioner was 1979 (3) SLR Vol.22, 506 between John Fernandez and another V/s Executive Engineer, Public Health Division Alleppey and another. In this authority his Lordship Mr. Justice V. Khalid of the Kerala High Court (who incidentally now adorns a bench of the Hon'ble Supreme Court of India) held on the basis of law laid down in 1978 LABIC 467 Bangalore Water Supply and Sewerage Board V/s A Rajappa and others that the Public Health Wing of the Public Health Engineering department comes within the expression "industry" as has been laid down by the judgement referred to above. His Lordship observed and I quote "by no stretch of imagination can it be stated that the Public Health Wing of the Public Health Engineering Department under the State Government is exercising sovereign functions strictly understood when alone the said establishment can qualify for exemption." This disposes of the preliminary of the respondent.

9. Certain facts emerge from the evidence on record veracity of which cannot be challenged by either of the parties. It is denied by the petitioner that he was ever in the employment of the respondent at Hisar in the year 1975, but I see no reason to disbelieve the statements of three responsible officials of the respondent department in that behalf. Simple case of the respondent is that after a case of theft had been registered against the petitioner and Shri Har Lal, Truck Driver, the petitioner absconded from his duties as a Mali and later on got himself registered in the Employment Exchange under the assumed name of Shri Ramesh Dass S/O Shri Sultan Singh, though earlier he was working as Rameshwar Dass S/o Shri Sultan Singh. I see reason to disbelieve the version given by three officials of the respondent department, but at the same time, it is difficult to fasten any guilt upon the petitioner simply because any case of theft was got registered against him and Shri Har Lal, Truck Driver. It is interesting to observe that no action was taken by the police on the said report inspite of the fact that the respondent department had sent to the police extra-judicial confessional statements of the petitioner and Shri Har Lal. It is also not on record as to what was the fate of the report, whether the same was filed untraced or still live with the police.

10. This fact was to the knowledge of the respondent that the petitioner is the same person, who was earlier employed as Mali in the name of Shri Rameswar Dass, S/o Shri Sultan Singh. It was also in the knowledge of the respondent that a case of theft regarding spare parts of the Truck had been reported against him and one other, though no action was taken by the police. If, these facts were known to the respondent what was the reason for the respondent to have again employed the petitioner on a responsible job of a pump Driver operator, defies all explanations. Now, the respondent department cannot be allowed to take some result and alleged that the petitioner's services have been terminated on the flimsy ground that he was a temporary petitioner had admittedly put in more than four years of un-interrupted service with the respondent in the second hand. The spell of his employment with the respondent, though in a temporary or *ad hoc* capacity. His termination squarely falls within the ambit of term "retrenchment" as defined in Section 2 (00) of the said Act, which cannot be brought about without complying with the mandatory provisions of Section 25F of the said Act. Admittedly no compliance was made by the respondent. Under these circumstances, termination order being void *ab initio* cannot be sustained and as such, the same is set aside.

11. The question of relief in the present case is not free from difficulty. The petitioner is a brazen liar when he stated that he was never in the employment of the respondent earlier in the year 1975. I have already dis-believed this part of his sworn testimony. After having absconded from his earlier employment, he got himself registered in the Employment Exchange, Hansi, under his present name of Ramesh Dass S/O Shri Sultan Singh and procured employment with the respondent after a lapse of more than three years on 30th July, 1979. So, his own conduct is not blemishless. The normal rule is to award full back wages in case, order of dis-engagement is dis-lodged. It is being done in the present case. But on the question of back wages, there is no straight jacket formula. Every case is decided on the basis of its own peculiar facts. In the present case, the conduct of the petitioner in seeking employment under changed name is not commendable. But at the same time the act of the respondent in terminating his services in a summary manner was not legal and lawful. So, in view of these circumstances, maintaining harmonious balance between the conduct of the parties, I award him back wages to the extent of 50 per cent and also dis-allow him the benefits of previous service. So, the petitioner is ordered to be reinstated with 50 per cent of back wages from the date of termination till the date of reinstatement and shall not be given the benefits of previous service. The reference is answered and returned accordingly with no order as to cost.

Dated the 1st May, 1987.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

Endst. No. 41-85 Dated

Forwarded (four copies) to the Secretary to Govt. Haryana, Labour and Employment Departments Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak.

Nq. 9/2/87-6Lab./2921.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s. Sheep and Wool Development Haryana, Bhiwani.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 108 of 1986

between

SHRI NIHAL SINGH, WORKMAN AND THE MANAGEMENT OF M/S. SHEEP AND WOOL DEVELOPMENT HARYANA, BHIWANI.

Present :

Shri V. K. Bansal, A. R. for the workman.

Shri L. R. Nain A.D.A. for the management.

AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri

Nihal Singh and the Management of M/s. Sheep and Wool Development Haryana, Bhiwani, to this Court, for adjudication,—vide Haryana Government, Gazette Notification No. 27906-11, dated the 4th August, 1986:—

Whether the termination of services of Shri Nihal Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference notice were issued to the parties. The parties appeared. The claim of the petitioner is that he was appointed as a Shepherder by the District Rural Development Agency on 25th August, 1981 and thereafter his services were transferred to the Assistant Director, Sheep and Wool Development, Bhiwani, but his services were terminated by the live Stock Assistant (Veterinary Incharge Centre, Sheep and Wool Extension Ganga District Sirsa on 27th May, 1985 and that before terminating his services no prior notice or retrenchment compensation was paid to him.

3. In the reply filed by the respondent, preliminary objections taken are that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that the claim is not against the proper party. On merits, it is alleged that since the petitioner was a work-charged employee and the post which he was holding was abolished, so, his termination was legal and justified.

4. On the pleadings of the parties, the following issues were settled for decision by me on 30th December, 1986 :—

1. Whether the respondent is not an "industry" as defined in section 2(j) of the I.D. Act, 1947? O.P.R.
2. Whether the respondent has not been properly prayed in the reference? OPR?
3. As per term of reference.
4. In support of his case, the petitioner appeared as WW-1 and the respondent examined Shri Kanwar Singh, Assistant Director, Sheep and Wool Development, Bhiwani.
5. Learned Authorised Representatives of the parties heard, My findings on the issues framed are as below :—

#### Issue No. 1 :

6. The nature of activity being carried on by the respondent has not been detailed by Shri Kanwar Singh, holding a very responsible position in the respondent/Department. In 1983 Vol. IV. S.C. Cases 214 S.K. Verma *versus* Mahesh Chandra and others. Their Lordships of the Hon'ble Supreme Court observed and I quote :—

"One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refers an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any charge of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objections and never thereby satisfied, carry the matter often times to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from Court to Court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporations will henceforth retain from raising needless objections, fighting needless litigations and adopting needless postures".

7. The landmark authority of the Hon'ble Supreme Court on this point of the controversy is Bangalore Water Supply and Sewerage Board *versus* A Rajappa and others reported in 1978 Lab. I.C. 467. In this authority their lordships have gone through the entire gamut of the term "industry" and if the guidelines laid down in this authority are adhered to the respondent squarely falls within the ambit of the term "industry" as defined in section 2(j) of the said Act. So, this issue is answered against the management.

#### Issue No. 2 :

8. No arguments were addressed on this issue, so, the same is answered against the respondent.

## Issue No. 3 :

9. Petitioner's termination is being justified on the ground that funds were not available for the post which he was holding after 27th July, 1985. Shri Kanwar Singh admitted that Shri Nathu Ram and Shri Jasbir Singh whose services had been terminated earlier were taken back on duty. Petitioner's tenure of employment being un-interrupted from 25th August, 1981 to 27th July, 1985 is not denied by the respondent, though he was initially appointed by the District Rural Development Agency at the disposal of Assistant Director, Sheep and Wool Development, Bhiwani. Shri Kanwar Singh, MW-1 stated that there was no post of Shepherd with the respondent. If that was the position what was the reason that the District Rural Development Agency, Sirsa choose to place the services of the petitioner at the disposal of the respondent. If there was no budgetary provision for the continuation of the post of Shepherd what was the reason Shri Nathu Ram and Jasvir Singh were again employed for the said post. Admittedly no prior notice or retrenchment compensation was paid to the petitioner before terminating his services. The petitioner had admittedly put in more than 240 days of actual work with the respondent during the last 12 calendar months preceeding the date of termination. So, termination would squarely falls within the ambit of term "retrenchment" as defined in section 2(00) of the said Act. So, termination/retrenchment of the petitioner could not have been brought about without adhering to the mandatory provisions of the section 25F of the said Act. No compliance was made. So, termination order is not sustainable. Since the petitioner raised the demand notice within six months of his termination, he cannot be denied the benefits of back wages. So, the petitioner is ordered to be reinstated with continuity of service and full back wages. The reference is answered and returned accordingly with no order as to cost.

Dated the 5th April, 1987

B P JINDAL,  
Presiding Officer,  
Labour Court, Rohtak

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947

B P JINDAL,  
Presiding Officer,  
Labour Court, Rohtak

No. 9/2/87-6Lab/2922.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/s. Assistant Director, Sheep and Wool Development Haryana, Bhiwani.

No. 9/2/87-6Lab./2922, dated, Chandigarh the 2nd June, 1987

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 230 of 85

between

SHRI NATHU RAM, WORKMAN AND THE MANAGEMENT OF M/S. ASSISTANT DIRECTOR, SHEEP AND WOOL DEVELOPMENT, HARYANA, BHIWANI.

Shri V. K. Bansal, A. R. for the petitioner.

Shri L. R. Nain, A.D.A. for the respondent.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Nathu Ram and the management of M/s. Assistant Director, Sheep and Wool Development, Haryana, Bhiwani, to this Court, for adjudication,—vide Haryana Government, Gazette Notification No. 51600—4 dated the 20th December, 1985 :—

Whether the termination of services of Shri Nathu Ram is justified in and order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was appointed as a Shepherd by the District Rural Development Agency, Sirsa on 21st December, 1981 and thereafter his services were transferred to the Assistant Director, Sheep and Wool Development, Bhiwani and that his services were terminated unlawfully by the Stock Assistant Incharge Sheep and Wool Extension Centre Mithri on 22nd May, 1985 and before doing so, he was not paid any retrenchment compensation and furthermore the officer who passed the order of termination was not competent to do so as he was not his appointing authority.

3. In the reply filed by the respondent, it is alleged that the respondent is not an "industry" as defined in section 2(j) of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and furthermore the petitioner was employed only on daily wages.

4. On the pleadings of the parties, the following issues were framed by me on 16th April, 1986 :—

1. Whether the petitioner is entitled to wages from the date of alleged termination to the date of reinstatement ? OPA
2. Whether the respondent is not an "industry" as defined in section 2(j) of the I.D. Act, 1947 ?
5. In support of his case, the petitioner appeared as WW-1 and the respondent examined Shri Kanwar Singh, Assistant Director, Sheep and Wool, Development, Bhiwani as MW-1.
6. Learned Authorised Representatives of the parties heard.

7. On 20th January, 1986 the petitioner made a statement in the Court that he has since been reinstated with effect from 18th January, 1986. So, now, the controversy which survives for adjudication is regarding back wages only. So, my findings on the issues framed are as below :—

#### Issue No. 1 :

8. Petitioner's services were dispensed with on 22nd May, 1985. Reasons for the same given by Shri Kanwar Singh, Assistant Director, Sheep and Wool, Bhiwani were that the petitioner was daily wagger and further more the scheme under which the petitioner was employed had been wound up. If that was the position, how is it that the petitioner was reinstated on 18th January, 1986. So, the paucity of funds was a lame excuse in dispensing with the services of the petitioner. Statement made by the petitioner as WW-1 practically remained rebutted. He stated that he remained un-employed from 22nd May, 1985 to 18th January, 1986, the date on which he was reinstated. So, there is no question of denying him back wages which are legitimately due to him, because his termination was absolutely illegal, otherwise there was no reason for the respondent to have reinstated him. So, this issue is answered in favour of the petitioner.

#### Issue No. 2 :

9. The nature of activity being carried on by the respondent has not been detailed by Shri Kanwar Singh, holding a very responsible position in the respondent/Department. In 1983 Vol. IVS.C. Cases 214 S. K. Verma *versus* Mahesh Chandra and others. Their Lordships of the Hon'ble Supreme Court observed and I quote :—

"(One objection is that there is no industry, a second that there is no industrial dispute and the third that the workman is no workman. It is a pity that when the Central Government, in all solemnity, refer an industrial dispute for adjudication, a public sector corporation which is an instrumentality of the State instead of welcoming a decision by the Tribunal on merits so as to absolve itself of any change of being a bad employer or of victimisation etc. should attempt to evade decision on merits by raising such objection and never thereby satisfied, carry the matter often time to the High Court and to the Supreme Court, wasting public time and money. We expect public sector corporations to be model employers and model litigants. We do not expect them to attempt to avoid adjudication or to indulge in luxurious litigation and drag workmen from Court to Court merely to vindicate, not justice, but some rigid technical stand taken up by them. We hope that public sector corporations will henceforth refrain from raising needless objections, fighting needless litigations and adopting needless postures".

10. The land mark authority of the Hon'ble Supreme Court on this point of the controversy is *Banglore Water Supply and Sewerage Board versus A Rajappa and others* reported in 1978 Lab. L.C. 467. In this authority their Lordships have gone through the entire grant of the term "industry" and if the guidelines laid down in this authority are adhered to, the respondent squarely falls within the ambit of term "industry" as defined in section 2(j) of the said Act, So, this issue is answered against the management.

11. In the light of my fore-going discussion, the petitioner is awarded full back wages from 23rd May, 1985 to 17th January, 1986 with all consequential benefits there upon. Back wages shall be calculated from the last wages drawn by the petitioner. The reference is answered and returned accordingly with no order as to cost.

Dated the 6th April, 1987.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat.

Endst. No. 230-85/902, dated the 1st May, 1987.

Forwarded (four copies) to the Secretary to Government Haryana Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B.P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat.

No. 9/2/87-6Lab./2923.—In pursuance of the provision of Section 17 of the Industrial disputes, Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the Workman and the management of M/S. Mohan Spinning Mills, Rohtak.

BEFORE SHRI B. P. JINDAL PRESIDING OFFICER, LABOUR COURT, ROHTAK.

Reference No. 23 of 85.

*between*

SHRI RAMESH CHAND, WORKMAN AND THE MANAGEMENT OF M/S. MOHAN SPINNING MILLS, ROHTAK.

Shri V.S. Singla, A.R. for the workman.

Shri M. Kaushal, A.R. for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Ramesh Chand and the management of M/s. Mohan Spinning Mills, Rohtak, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 7503—8, dated 28th February, 1985 :—

Whether the termination of services of Shri Ramesh Chand is justified and in order ? If not, to what relief is he entitled ?

2. After receipt of the order of reference, notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent as a Doffer since 12th April, 1977 and that on 21st July, 1984 when the petitioner went to the respondent mill in Shift "A", his entry was barred to the factory premises and termination order was served upon him and in passing the same the respondent did not follow the principles of natural justice, because no enquiry was held in relations to the allegations against the petitioner and that he was dismissed from service as he was an active unionist, espousing the cause of the working class and the order of termination was passed to silence the voice of the workforce.

3. In the reply filed by the respondent, employment of the petitioner is admitted but it is alleged that the order of dismissal dated 21st July, 1984 was passed after the workman had mis-behaved with senior officers inside the factory premises during the working hours. There was an atmosphere of violence in the respondent mill, and to pacify the workforce a binding settlement was arrived at between the workforce and the management in the month of April, 1984, which was to remain in force for a period of

two years, whereunder, the workers agreed not to resort to "go slow", "tool down", or any such tactics which may slow the production process but the workforce started indulging in pernicious practices from the very next month of May 1984, but even then, the management as a gesture of goodwill again arrived at an amicable settlement with the workers in the month of May 1984, but the said settlement was also flouted by the workforce, which did not see the path of reason and started indulging in unhealthy practices resulting in sharp slump in production and so, the controversy was carried to the Labour Department Government of Haryana without any tangible outcome. It is also alleged that during the years 1982 to 1984 functioning of the respondent mill was in complete disarray because of the *in terse* rivalry between the various unions operating in the respondent mill and so, the workforce was a divided lot with divided loyalties and the be-draggled management was saddled with the arduous task of weighing five kilograms of frogs in the conventional weighing scale and the harassed management was feeling perplexed in the task of conciliation/negotiating hyperbolic demands of the various unions, which never adhered to any settlement arrived at and in that situation prevailing in those days of complete chaos, the conduct of the petitioner in dis-obeying the order of the seniors and man-handling Shri Kamla Singh, Supervisor, was viewed very seriously and as such, the order of dismissal was fully justified. It is further alleged that during those barrowing days of serious industrial unrest in the respondent/mill, senior functionaries of the respondent/mill were reluctant to perform their duties effectively out of fear of reprisal from the workforce, which was a mis-guided lot and as such, many senior officers of the respondent/company left it under these circumstances and in spite of these adverse environments, the management of the respondent choose to keep the wheels of machineries running lest a sizeable number of workmen may not be rendered un-employed. Other pleas taken are that the terms of present reference are confined to the justifiability or otherwise of the alleged order of termination and since the petitioner was dismissed from employment, so, the controversy before the Court spills beyond the terms of reference and as such, the same is bad in law and that because of the reprehensible conduct of the workman during his tenure of employment, the management has since lost confidence in the workman, Residuary pleas taken is that the petitioner remained gainfully employed after his dismissal and so, in case of reinstatement, he shall not be entitled to back wages.

4. On the pleadings of the parties, the following issues were settled for decision by me on 15th October, 1985 :-

1. Whether the reference is bad in law ? OPR.
2. Whether the management has since lost confidence in the workman ? OPR.
3. Whether the workman remained gainfully employed after his alleged termination ?
4. As per terms of reference.

5. The management examined MW-1 Shri Kamla Singh, Supervisor, MW-2 Shri Kailash Dube, another Supervisor, and Shri M. K. Gandhi, its Chief Executive as MW-3. The workman appeared as WW-1.

6. Learned Authorised Representatives of the parties heard. My findings on the issues framed are as below :-

#### Issue No. 1 :

7. There is a plea by the management that since the petitioner was dismissed from employment and the order of reference is regarding termination, so, the reference is bad in law. The contention is too legalistic to merit recognition. Termination covers dismissal also. So, on this ground the petitioner cannot fail.

#### Issue No. 3 :

8. There is not an *iota* of evidence on behalf of the respondent for not even a suggestion to the petitioner when he appeared in the Court as WW-1 that he remained gainfully employed after his dismissal. So, this issue for want of evidence is returned against the respondent.

#### Issue No. 2 :

9. The petitioner was not doing any work of sensitive nature, so that his continuation with the respondent would have been hazardous.

#### Issue No. 4 :

10. The learned Authorised Representative of the petitioner contended that since no domestic enquiry was held in relation to the acts of mis-conducts alleged to have been committed by the petitioner, his sudden dismissal from service smacks of vendetta on the part of the management and the order of

dismissal was prompted to put an end to his union activities. Faced with this situation, the learned Authorised Representative of the respondent, on the basis of plethora of documents placed upon the file Ex-M-2 to M-87 contended that the atmosphere in the respondent mill was so surcharged with violence that no domestic enquiry was possible. In that behalf, he has drawn my attention to the statement of Shri M.K. Gandhi, the then Chief Executive of the respondent mill, who passed the order of dismissal against the petitioner. He stated that he remained posted in the respondent mill as Chief Executive from 5th May, 1984 to 10th September, 1984 and that during his tenure there was lot of industrial unrest as the workforce was indulging in acts of gross indiscipline, because the workers used to sit idle outside the working shed and that in that behalf he addressed letters Ex. M-1 to M-16 to the Labour Department, Government of Haryana, Leaders of the various unions operating in the respondent mill, drawing their attention to the go slow tactics being adopted by the workmen and not adhering to any of settlement arrived as with them between the years 1982 to 1984. He further stated that since many workers unions had mushroomed in the respondent mill, all and each pulling apart, the management had lot of difficulty in negotiating with the workforce. He further stated that regarding slump in production, the management used to apprise the union leaders through a notice upon the notice board and that the workman used to threaten, intimidate the senior functionaries of the respondent mill, who used to coax or persuade them to work with dedication.

11. Regarding the charge against the petitioner is the statement of Shri Kamla Singh MW-14 who stated that he remained posted in the respondent mill as a Checker in the Winding department from the years 1978 to 1986 and that he filed complaint Ex M-2 against the petitioner and that on 19th July, 1984 when he tried to restrain the petitioner from throwing away usable bobbins, the petitioner did not resist and that when he again asked the petitioner to do so, he threatened to teach him a lesson, in case, he reported the matter to the higher authorities, and further caught hold of the collar of his shirt. This act was committed by the petitioner in the presence of Shri Kailash Dube MW-2. As already observed and from the various letters/communications/notices/settlements placed on record by the respondent, it is clear that there was complete chaos in the respondent mill between the years 1982 to 1984. The workforce was on war path. It was divided into spinter groups. The management was neck deep in the quagmire of industrial unrest, where the workers indulged in violence with impunity and the bedraggled management was feeling flummoxed in dealing with the workforce, which was a collage of groups each operating under different trade union labels and each out doing the other in raising impossible demands with the management. No doubt legitimate union activities are the statutory rights of the workforce but this right cannot be converted into a licence to indulge in violent activities and thereby endangering the very existence of the concern. Settlements arrived at with the various unions by the management were never adhered to, because these unions were not working in tandem. This was the scenario when the services of the petitioner were dispensed with the respondent. In my opinion, in such a situation, it was not possible for the management to hold a domestic enquiry against the petitioner, because no officer or workman would have come forth to depose against the petitioner.

12. Faced with this situation, the learned Authorised Representative of the petitioner contended that since no opportunity to lead evidence regarding the allegations of misconduct against the petitioner, was sought by the management, evidence adduced cannot be read in evidence. In that behalf, on behalf of the respondent 1987 Lab. I.C. 416 Lalit Mahto V/s. The Presiding Officer, Central Government Industrial Tribunal, Dhenbad was cited. In this authority, his Lordship held that it was a matter of procedure and no finding was specifically required to be rendered. Under these circumstances, the management was fully justified in not holding the domestic enquiry against the petitioner before passing the order of dismissal.

13. Now, the question would be as to whether any interference by this Court to whittle down the order of dismissal under section 11-A of the Industrial Disputes Act, 1947 is called for or not. On behalf of the petitioner, a prayer for lenient view was made, because it was argued that for this single act of indiscipline, the petitioner should not have been awarded the extreme penalty of dismissal. This Court is not prepared to buy this argument, because the petitioner not only held out a threat of teaching lesson to Shri Kamla Singh, his immediate Supervisor, outside the factory gate in concert with his co-workers but, actually man-handled Shri Kamla Singh when he caught hold of the collar of his shirt. His act, of misconduct has to be viewed in the context of circumstances prevailing in the respondent mill in those days. In this Country millions are clamouring for cover and crumbs. If any unit is closed or production suffers because of any act of indiscipline, the country as a whole suffers. So, no interference by this Court under Section 11-A of the Industrial Disputes Act, 1947 is called for in the order of dismissal. However, to mitigate the hardship, the petitioner may suffer because of unemployment, he is awarded a sum of Rs. 7,000 as compensation, purely on compassionate grounds. The reference is answered, and returned accordingly with no order as to cost.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat,

Dated : 15th April, 1987.

Endst No. 23-85/905, dated 1st May, 1987.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Sonapat.

No. 9/2/87-6Lab./2924.—In pursuance of the provision of Section 17 of the Industrial disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s. Mohan Spinning Mills, Rohtak :—

BEFORE SHRI B.P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 40 of 85

between

SHRI BHIM SINGH, WORKMAN AND THE MANAGEMENT OF M/S. MOHAN SPINNING MILLS, ROHTAK

Present: Shri V. S Singal, A.R. for the workman.

Shri M.M. Kaushal, A.R. for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana, referred the following dispute, between the workman Shri Bhim Singh and the management of M/s. Mohan Spinning Mills, Rohtak, to this Court, for adjudication,—*vide Haryana Government Gazette* Notification No. 10552—57, dated 15th March, 1985:—

Whether the termination of services of Shri Bhim Singh is justified and in order? If not, to what relief is he entitled?

2. After receipt of the order of reference notices were issued to the parties. The parties appeared. The case of the petitioner is that he was employed with the respondent since 6th January, 1977 but the respondent choose to terminate his services all of a sudden,—*vide* order dated 21st July, 1984 on the basis of trumped up charges, into which, no domestic probe was held and that the order of termination was passed as the management was piqued against the petitioner who was an active member of the Mohan Spinning Mill Mazdoor Sabha, which union was vociferously agitating the cause of the workforce and as such, the order of dismissal was an act of victimisation. So, he has prayed for reinstatement with continuity of service and full back wages.

3. In the reply filed by the management, employment of the petitioner as alleged is not denied but it is alleged that the order of dismissal dated 21st July, 1984 was passed after the workman was found guilty of gross mis-conduct with a female worker of the respondent inside the factory premises on 20th July, 1984. This act of the petitioner was viewed seriously because there was an atmosphere of violence in the respondent mill and to pacify the workforce binding settlement was arrived at between the workers and the management in the month of April, 1984, which was to remain in force for a period of two years, thereunder, the workers agreed not to resort to "go slow", "tool down" or any such tactics which may slow the production process but the workforce started indulging in these very pernicious practices from the very next month of May, 1985, but even then, the management as a gesture of good-will again arrived at an amicable settlement with the workers in the month of April, 1984 but the said settlement was also flouted by the workforce, which did not see the path of reason and started indulging in unhealthy practices resulting in sharp slump in production and the controversy was carried to the Labour Department Govt. of Haryana without any tangible outcome. It is also alleged that during the years 1982 to 1984 functioning of the respondent mill was in complete dis-array because of the *inter se* rivalry between the various unions operating in the respondent mill and so, the workforce was divided a lot with divided loyalties and the begoggled management was saddled with the arduous task of weighting five kilograms of frogs in the conventional weighing scale and the harassed management was feeling perplexed in the task of conciliation negotiating hyperbolic demands of the various unions, which never adhered to any settlement arrived at and in that situation, prevailing in

those days of complete chaos, the conduct of the petitioner in teasing a female worker by using unbecoming language towards her, was viewed very seriously and as such, order of dismissal was fully justified. It is further alleged that during those harrowing days of serious industrial unrest in the respondent/mill, senior functionaries of the respondent /mill were reluctant to perform their duties effectively out of fear of reprisal from the workforce, which was a mis-guided lot and as such, many senior officers of the respondent left in under those circumstances and in spite of these adverse environments, the management of the respondent choose to jeeo go wheels of machineries running lest a sizeable number of workmen may not be rendered un-employed. Other pleas taken are that the terms of present reference are confined to the justifiability or otherwise of the alleged order of termination and since the petitioners was dismissed from employment, so, the controversy before the Court spills beyond the terms of reference and as such, the same is bad in law and that because of the reprehensible conduct of the workman during his tenure of employment, the management has since lost confidence in the workman, Residuary pleas taken is that the petitioner remained gainfully employed after his dismissal and so, in case of reinstatement, he shall not be entitled to back wages.

4. On the pleadings of the parties, the following issues were settled for decision by me on 14th June, 1985:—

1. Whether the reference is bad in law ? OPR
2. Whether the workman remained gainfully employed after his termination ? OPR
3. As per terms reference.

5. In support of his case, the petitioner himself appeared as WW-1 and examined WW-2 Smt. Santosh. The management examined MW-1 Shri Kailash Dube, its Supervisor, MW-2 Shri M.K. Gandhi, its then Chief Executive.

6. Learned Authorised Representative of the parties heard. My findings on the issues framed are as below :—

#### Issue No. 1 :

7. There is a plea by the management that since the petitioner was dismissed from employment and the order of the reference is regarding termination, so, the reference is bad in law. The contention is too legalistic to merit recognition. Termination covers dismissal also. So, on this ground the petitioner cannot fail.

#### Issue No. 2 :

8. There is no an iota of evidence on behalf of the respondent or not even a suggestion to the petitioner when he appeared in the Court as WW-1 that he remained gainfully employed after his dismissal. So, this issue for want of evidence is returned against the respondent.

#### Issue No. 3 :

9. The charge against the petitioner is that on 20th July, 1984, when he was working in shift "A" commencing from 7.00 a.m. in the reeling section around 12.00 noon the petitioner approached Smt. Santosh a co-worker and uttered these words "I want to kiss you". and when Smt. Santosh protested against the behaviour of the petitioner and threatened to lodge a complaint with the mill authorities, the petitioner again mis-behaved with her and used un-parliamentary language. These allegations of mis-conduct have been drawn from the order of termination Ex M-1 dated 27th July, 1984. In the said order it is also mentioned that because of the atmosphere of violence in the respondent mill, it was not expedient to hold an enquiry into the allegations of mis-conduct. To prove these allegations, the management examined MW-1 Shri Kailash Dube, Supervisor, who stated that complaint Ex. M-2 was received by him which he sent to the higher authorities for further action. Then there is a statement of Shri M.K. Gandhi, the then Chief Executive of the respondent mill regarding the general atmosphere of chaos from the year 1982 to 1984. The star witness of the management qua whom the petitioner is alleged to have committed the mis-conduct was examined by the workman as WW-2. She categorically stated that She knew the petitioner for the last about nine years, who is her co-worker in the respondent mill for the last about six-seven years and that the petitioner never mis-behaved with her. So, the main charge of mis-behaviour against the petitioner stands knocked out. Faced with this situation, the learned Authorised Representative of the respondent Shri Kaushal contended that since Smt. Santosh WW-2, has admitted her signature on the complaint Ex. M-2, there are reasons to believe that She has been coerced into making a statement favourable to the petitioner or she has been won over by the workman or she is making a wrong statement to help out a co-worker. Be that it may be so, the testimony of Smt. Santosh goes a long way to prove that the allegations against the petitioner were trumped up and as per the version of Smt. Santosh Kumari in cross examination, she made the complaint at the instance of Shri

Nagpal, Incharge of the Khata. Agreed that there was an atmosphere of violence in the respondent mill during the years 1982 to 1984 and the work force was out to undo any settlement arrived at with the management but from this scenario, no inference can be drawn that the petitioner had actually misbehaved with Smt. Santosh. Had the petitioner been guilty of any other act of misconduct, the question would have been different, but the only allegation in the order of dismissal against the petitioner is regarding his unbecoming conduct towards Smt. Santosh a co-worker on 20th July, 1984. Since Shri Kailash Dube was not a witness to the alleged occurrence, so, his testimony does not go to prove the alleged act of misconduct against the petitioner. Under these circumstances, the order of dismissal cannot be sustained. The same is set aside. The petitioner is ordered to be reinstated.

10. Now, the question of backwages survives. Unfortunately, there is no date on the demand notice received along with the order of reference. But the reference order was received in the Court in the month of March, 1985. So, in any case, the petitioner must have raised the demand notice somewhere in the month of November, 1984. Order of dismissal is dated 21st July, 1984. So, delay of 4-5 months in raising the demand notice cannot be a ground to make a cut in backwages. So, the petitioner is ordered to be reinstated with continuity of service and full backwages. The reference is answered accordingly.

Dated 20th April, 1987.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak.

Endst. No. 40-85/906, dated 1st May, 1987.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,  
Presiding Officer,  
Labour Court, Rohtak.

No. 9/2/87L-6Lab./2925.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XVI of 1947), the Governor of Haryana, is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Mohan Spinning Mills, Rohtak.

BEFORE SHRI B. P. JINDAL, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 44 of 85.

between  
SHRI ROHTASH, WORKMAN AND THE MANAGEMENT OF M/S MOHAN SPINNING  
MILL, ROHTAK.

Present :—

Shri Raghubir Singh, A.R., for the workman.

Shri M. Kaushal, A.R., for the management.

#### AWARD

1. In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute, between the workman Shri Rohtash and the management of M/s Mohan Spinning Mill, Rohtak, to this Court, for adjudication,—vide Haryana Government Gazette Notification No. 11549—54, dated 21st March, 1985 :—

Whether the termination of services of Shri Rohtash is justified and in order ? If not to what relief is he entitled ?

After receipt of the order of reference, notices were issued to the parties. The parties appeared. The claim of the petitioner is that he was employed with the respondent as a Drawing Frame Tenter since 1st September, 1970 on monthly wages of Rs. 601 and that the management terminated his services on 14th September, 1984 without conducting any domestic enquiry and in flagrant disregard of the provisions of the Certified Standing Orders of the respondent and that the order of termination was passed as an act of victimisation, because the petitioner was a active unionist. So, he has prayed for reinstatement with continuity of service and full back wages.

2. In the reply filed by the respondent, employment of the petitioner as alleged is admitted. Various preliminary objections have been taken to justify the order of dismissal. The same are that the reference is bad in law, because the same is regarding justifiability or otherwise of the alleged order of termination, though, in fact the petitioner was dismissed from employment. *inter alia*, it is alleged that a binding settlement was arrived at between the work force and the management of the respondent mill in the month of April, 1984,

which was to remain in force for a period of two years, where under the work force agreed not to resort to "go slow", "tool down" or any such tactics but the workers started indulging in pernicious practices from the next month of May, 1984 but even then, the management as a gesture of goodwill again arrived at an amicable settlement with the workers in the month of May, 1984 but the said settlement was also not adhered to by the workers, who did not see the path of reason and started indulging in unhealthy practices resulting in sharp slump in production and so, the controversy was carried to the Labour Department, Haryana and the intervention of the Dy. Labour Commissioner, Sonapat and the Joint Labour Commissioner, Haryana, did not result into any tangible outcome. It is also alleged that during the years 1982 to 1984 functioning of the respondent/mill was in complete disarray because of the *inter se* rivalry between the various unions operating in the respondent mill and so the work force of the respondent mill was a divided lot with divided loyalties and the bedraggled management was saddled with the arduous task of conciliating/negotiating regarding hyperbolic demands of the various unions, which never adhered to any settlement arrived at in that situation, prevailing in those days of complete chaos, the conduct of the petitioner in using abusive language towards Tek Chand, Assistant Spinning Master, was viewed very seriously, though earlier his similar conduct in disobeying order of his seniors with impunity was condoned, taking into consideration the fact that the petitioner may see the path of reason but the petitioner remained adamant in his attitude and started defying his seniors, openly neglecting the work assigned to him. Regarding his earlier misconduct, a domestic probe was conducted, which found the petitioner guilty of the misconducts alleged but a lenient view was taken to assuage the feelings of the work force. But latest misconduct of the petitioner was of such a nature that no lenient view could be taken. So, the order of dismissal was fully justified. It is further alleged that during these harrowing days of serious industrial unrest in the respondent/mill, senior functionaries of the respondent/Mill were reluctant to perform their duties effectively out of fear reprisal from the work force, which was misguided lot and as such, many senior officers of the respondent/company left it under these circumstances and in spite of these adverse environments, the management of the respondent chose to keep the wheels of machineries running lest a sizeable number of workmen may not be rendered unemployed. Residuary plea taken is that the petitioner remained gainfully employed after his dismissal and so, in case of reinstatement he shall not be entitled to back-wages.

3. On the pleadings of the parties, the following issues were settled for decision by me on 14th June 1985:—

- (1) Whether the reference is bad in law?
- (2) Whether the workman remained gainfully employed after his alleged termination?
- (3) As per terms of reference.

4. The workman appeared as his own witness as WW-1 and the management examined MW-1 Shri M.K. Gandhi, the then Chief Executive of the respondent/mill, MW-2 Shri Subhash Chander Jain, Labour Officer, MW-3 Shri J.L. Yadav, Assistant Labour Officer, MW-4 Shri Tek Chand Kajal, Assistant Spinning Master and MW-5 Shri G. C. Sharma, Manager (Technical) of the respondent/mill.

5. After the parties had closed their evidence, the petitioner wanted an opportunity to adduce evidence upon issue No. 3, which prayer was declined because onus of this issue was upon the petitioner.

6. Learned Authorised Representatives of the parties heard.

Issue No. 1 :

7. There is a plea by the management that since the petitioner was dismissed from employment and the order of reference is regarding termination, so, the reference is bad in law. The contention is too legalistic to merit recognition. Termination covers dismissal also. So, on this ground the petitioner cannot fail.

Issue No. 2 :

8. There is not an iota of evidence on behalf of the respondent or not even a suggestion to the petitioner when he appeared in the Court as WM-1 that he remained gainfully employed after his dismissal. So, this issue for want of evidence is returned against the respondent.

Issue No. 3 :

9. The allegations against the petitioner are that on 12th September, 1984 he was working in the "B" shift commencing from 7-00 a.m. to 3-00 p.m. On the said date Shri Tek Chand, Assistant Spinning Master, was on usual round of the Speed Frame Section and found the petitioner standing near another machine after neglecting his work and when Shri Tek Chand asked the petitioner the reasons for whiling away his time the petitioner started using abusive language towards Shri Tek Chand. The words used by him when rendered in simple English would read "I have already told you not to talk non-sense with me otherwise he will insert a spindle in the anus of Shri Tek Chand". He further lost temper and held out a threat to Shri Tek Chand that he will see him outside the mill premises.

11. Earlier on 15th June, 1984 the petitioner had used abusive language towards Shri Tek Chand, Assistant Spinning Master. Into this misconduct domestic probe was held by Shri J.L. Yadav, who was examined as MW-3. The entire record of the proceedings has been placed on file. The same is Ex. M-3. On behalf of the petitioner Shri Singh forcefully contended that since no domestic enquiry was held into the alleged misconduct of the petitioner and no right to adduce evidence to prove the same before the Court had been reserved by the respondent, order of dismissal was violative of the provisions of the Certified Standing Orders. In support of his contention he cited 1984 (64) Indian Factories Journal 37 Shambhu Nath Goyal V/s. Bank of Baroda and others. Simply because it was not written in the reply filed that the management reserves its right to prove the allegations against the petitioner, such an opportunity can be denied to the respondent. On behalf of the respondent strong reliance was placed upon 1978 (36) FIR 491 between Municipality Corporation of Greater Bombay and P.S. Malvenker and others. In this authority their Lordships of the Supreme Court observed as under :—

“But even if the view were taken that the impugned order of termination of service of the respondent was punitive in character and could not have been passed save and except as result of a disciplinary inquiry held under clause(2) of Standing Order 21 read with Standing Order 23, the impugned order cannot be struck down as invalid on the ground of non-compliance with the requirement of these Standing Orders, since the appellant availed of the opportunity open to it before the Labour Court and adduce sufficient evidence justifying the action taken by the Management. The appellant produced satisfactory evidence to show that the impugned order terminating the service of the respondent was justified and hence the impugned order must be sustained despite its having been passed without complying with the requirements of clause (2) of Standing Order 21 read with Standing Order 23. We are fortified in the view by a catena of decisions of this Court where it has been consistently held that no distinction can be made between cases where the domestic enquiry is invalid or defective and those where no enquiry has in fact been held as required by the relevant Standing Orders and in either case it is open to the employer to justify his action before the Labour Tribunal by adducing all relevant evidence before it.

12. Having cleared the legal position on the point, now let us revert to the evidence adduced by the respondent to prove the allegations of misconduct against the petitioner. The star witness is MW-4 Shri Tek Chand, Assistant Spinning Master. He has given a graphic account of the happenings on 12th September, 1984. He was put to a gruelling cross-examination but his testimony could not be dislodged by the petitioner. Shri M.K. Gandhi, who was examined as MW-1 has given a photographic account of the situation prevailing in the respondent Mill during those days. Shri J.L. Yadav, MW-3 also stated about the earlier enquiry held by him against the petitioner. Shri G.C. Sharma, who was examined as MW-5 and who passed the order of dismissal categorically stated that in view of the surcharge atmosphere in the mill in those days, no witness was ready to depose against the petitioner out of fear of reprisals from the work force and as such it was not expedient to hold a domestic enquiry in relation to the allegations against the petitioner. In the present case, the order of dismissal has to be viewed in the context of the circumstances, prevail in the respondent Mill on the date of dismissal. The workforce was on war path. It was a collage of desperate groups each operating under different trade union labels. The bedraggled management was neck deep in the quagmire of industrial unrest. Indiscipline was reigning supreme in the respondent mill. The petitioner committed acts of misconduct not once but many times. His earlier misconduct was ignored in the interest of industrial peace. This Court cannot countenance a situation to be created where any unit is closed or production suffers because of any act of indiscipline, which is very rife in this country. So, no interference by this Court under Section 11-A indulging the order of dismissal is called for. However, taken into consideration the long period service of the petitioner and to lessen the rigours of unemployment, the petitioner is awarded compensation of Rs. 10,000 purely on compassionate grounds. The reference is answered and returned accordingly with no order as to cost.

B. P. JINDAL,

Dated 10th April, 1987.

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Bahadurgarh.

Endst No. 44-85/907, dated 1st May, 1987.

Forwarded (four copies), to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

B. P. JINDAL,

Presiding Officer,  
Labour Court, Rohtak,  
Camp Court, Bahadurgarh.